

This letter discusses the Telecommunications Excise Tax treatment of several cellular telecommunications fact patterns. See 35 ILCS 630/1 et seq. (This is a GIL).

October 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 17, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We request a clarification of the law on the taxability of roaming charges billed by a telecommunications provider to customers. We have organized this request by first stating what we believe to be the relevant facts. We then specifically outline the tax questions we are attempting to address in the Issue section. Following the Issue section is a discussion of the relevant law and our conclusions for your confirmation. We understand that your conclusions will be based on the facts presented and that a change in the facts as we have described them may change the conclusion. Our client is attempting to confirm that they are in compliance with the law, and if not, what changes need to be made to come into compliance. Therefore, if a response to this request can be expedited, it would be greatly appreciated.

Facts

AAA is a CITY cellular telecommunications provider with customers that travel nationwide and place cellular calls while in other cities. When AAA's customers place calls while physically outside of the designated home area, AAA charges them a separate variable for 'roaming'. In some cases, depending on the type of service plan chosen by the customer, roaming is built in to the overall charge and AAA does not bill the customer separately for roaming. For purposes of this letter ruling, we are concerned only with the situation where AAA charges its customers separately for roaming. AAA has customers in Illinois and several other states and those customers roam within Illinois and other states. Calls are made to and from Illinois locations and sometimes a call made by an Illinois customer occurs wholly outside the state. It is possible that a customer may roam from Illinois to another state while still continuing the same phone call. AAA is trying to determine the taxability of the roaming charges made to its customers in the different scenarios discussed below.

Issue

Example 1: AAA has an Illinois customer that places a cellular telephone call to a CITY phone number while in Chicago and incurs roaming charges from a Chicago cellular provider. The call originates and terminates in Illinois and is billed to an Illinois address. AAA will pay the charges to the Chicago cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Example 2: AAA has a CITY, Illinois customer that places a cellular telephone call to a St. Louis, Missouri phone number while in Chicago and incurs roaming charges from a Chicago cellular provider. The call originates in Illinois and is billed to an Illinois address. AAA will pay the charges to the Chicago cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Example 3: AAA has an Illinois customer that places a cellular telephone call to a Chicago phone number while traveling in St. Louis, Missouri and incurs roaming charges from a St. Louis cellular provider. The call originates in Missouri but terminates in Illinois and is billed to an Illinois address. AAA will pay the charges to the St. Louis cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Example 4: AAA has a Missouri customer that places a cellular telephone call to a Chicago number while traveling in Peoria and incurs roaming charges from a Peoria cellular provider. The call originates and terminates in Illinois and is billed to a Missouri address. AAA will pay the charges to the Peoria cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Example 5: AAA has a St. Louis customer that places a cellular telephone call to a Chicago number while traveling in Joplin, Missouri and incurs roaming charges from a Joplin cellular provider. The call terminates in Illinois and is billed to a Missouri address. AAA will pay the charges to the Joplin cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Example 6: AAA has an Illinois customer that places a cellular telephone call to a Cape Girardeau, Missouri phone number while traveling in St. Louis, Missouri and incurs roaming charges from a St. Louis cellular provider. The call originates and terminates in Missouri but is billed to an Illinois address. AAA will pay the charges to the St. Louis cellular provider for the roaming charges incurred by the customer. AAA will bill the customer for the monthly usage fee plus a separate amount for roaming.

Discussion of Applicable Law & Conclusion

Illinois Telecommunications Excise Tax Act, Section 2(a) states that 'gross charge' means the amount paid for the act or privilege of originating or receiving telecommunications in Illinois and for all services and equipment provided in connection with the service. Section 2(n) defines 'service address' to mean the location of

telecommunications equipment from which the telecommunications are originated or at which telecommunications services are received by a taxpayer. When the service address is not a defined location, the service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.

In example one, the cellular call originated and terminated in Illinois and was billed to an Illinois address. We believe AAA should charge Illinois sales tax on the roaming charges billed to the customer because the call originated and terminated in Illinois and was billed to an Illinois address.

In examples two and three, the cellular calls either originated or terminated in Illinois and were billed to Illinois addresses. We believe AAA should charge Illinois sales tax on the roaming charges billed to customers because the calls either originated or terminated in Illinois and the customers have Illinois billing addresses.

In example four, the cellular call originated and terminated in Illinois but was billed to a Missouri address. We believe AAA should charge Illinois sales tax on the roaming charges billed to the customer because the call was an intrastate call.

In example five, the cellular call originated in Missouri but terminated in Illinois and was billed to a Missouri address. We believe AAA should not charge Illinois sales tax on the roaming charges billed to the customer because the customer does not have an Illinois billing address.

In example six, the cellular call originated and terminated outside of Illinois, but was billed to an Illinois address. We believe AAA should not charge Illinois sales tax on the roaming charges billed to the customer because the call did not originate or terminate in Illinois even though the customer had an Illinois billing address.

Your timely response is respectfully requested in order that our client can confirm its compliance with the state law as soon as possible. If you have any questions please feel free to call me.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3. This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5.

Under Section 2(c) of the Act, the meaning of telecommunications, "in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities."

Under Section 2(a), "gross charge" means, in part, "the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided

in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever.”

Under Section 2(b), amount paid means “the amount charged to the taxpayer’s service address in this State regardless of where such amount is billed or paid.”

Under Section 2(n), service address means “the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer’s primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.”

We agree that the telecommunications as described in examples one, two, and three are subject to Telecommunications Excise Tax. This is because the calls are either intrastate within Illinois or interstate with the calls either originating or being received in Illinois, and, in each example, the service address is in Illinois.

We do not agree that the telecommunications described in example four are subject to Telecommunications Excise Tax. Although the call is intrastate within Illinois, the service address is out-of-State. Under the statutory definition of “amount paid,” charges to service addresses outside Illinois are not subject to the tax.

We also agree that the telecommunications described in examples five and six are not subject to Telecommunications Excise Tax. In example five, although the call is received in Illinois, the service address is outside Illinois. In example six, the call is neither intrastate within Illinois nor interstate with the call either originating or being received in Illinois. It does not matter that the service address is in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department’s Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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